

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Decision of
the Agricultural Commissioner of
the County of San Bernardino
(County File No. #36-02-27)

Administrative Docket No. 112

DECISION

GREG WALLACE
c/o City of San Bernardino
234 South Mountain Avenue
San Bernardino, California 92407

Appellant /

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5 and section 6130 of Title 3, California Code of Regulations (3 CCR), county agricultural commissioners may levy a civil penalty up to \$1,000 for certain violations of California's pesticide laws and regulations.

After giving notice of the proposed action and providing a hearing, the San Bernardino County Agricultural Commissioner found that Greg Wallace violated FAC section 12973. The commissioner imposed a penalty of \$151 for the violation.

Greg Wallace appealed the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation. The Director has jurisdiction in the appeal under FAC section 12999.5.

Standard of Review

The Director decides the appeal on the record before the Hearing Officer. In reviewing the commissioner's decision, the Director looks to see if there was substantial evidence, contradicted or uncontradicted, before the Hearing Officer to support the Hearing Officer's findings and the commissioner's decision.

The substantial evidence test requires only enough relevant information and inferences from that information to support a conclusion, even though other conclusions might also have been reached. In making the substantial evidence determination, the Director draws all reasonable inferences from the information in the record to support the findings, and reviews the record in the light most favorable to the commissioner's decision. If the Director finds substantial evidence in the record to support the commissioner's decision, the Director affirms the decision.

Section 12973

FAC section 12973 provides, "The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner."

The label information in the record for Fumitoxin states "For retail sale to and use only by Certified Applicators for those uses covered by the applicator's certification or persons trained in accordance with the attached product manual working under the direct supervision and in the physical presence of the Certified Applicator."

There is information in the record that San Bernardino Agricultural Standards Officer Emilio Lopez observed the Appellant applying a pesticide to treat a gopher system in Blair Park on May 2, 2002. Officer Lopez then saw the Appellant carry a Fumitoxin container from the gopher system and place it inside his truck's toolbox. Officer Lopez was able to identify the container as a Fumitoxin container because the Fumitoxin container is a bright aluminum cylinder, unlike other pesticide containers.

During the inspection, Officer Lopez requested the Appellant to open his toolbox so that Officer Lopez could obtain the EPA registration number for the Fumitoxin. When the Appellant opened the toolbox, the Fumitoxin container was inside.

There is information in the record that the Appellant, an employee of the City of San Bernardino, did not possess a valid Qualified Applicator Certificate on May 2, 2002, and was working alone. The Appellant had previously possessed a Qualified Applicator Certificate, which expired on December 31, 2001. Also, there is information in the record that the Appellant admitted to the violation during the inspection.

A reasonable inference from the information in the record is that Greg Wallace applied Fumitoxin at Blair Park without a Certified Applicator present as required by the label instructions in conflict with its registered labeling and violated FAC section 12973.

Greg Wallace
Docket No. 112
Page Three

Conclusion

The record shows the commissioner's decision is supported by substantial evidence and there is no cause to reverse or modify the decision.

Disposition

The commissioner's decision is affirmed. The commissioner shall notify the appellant how and when to pay the \$151 fine.

Judicial Review

Under FAC section 12999.5, the appellant may seek court review of the Director's decision within 30 days of the date of the decision. The appellant must bring the action under Code of Civil Procedure section 1094.5.

**STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION**

By: original signed by
Paul E. Helliker
Director

Dated: September 13, 2002